

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DONTIE S. MITCHELL,

Plaintiff,

-against-

JPAY, LLC; B. McCLOSKEY, FOOD SERVICE  
ADMINISTRATOR AT FISHKILL  
CORRECTIONAL FACILITY; SGT. D.  
PAUSELIUS, SERGEANT AT FISHKILL C.F.,

Defendants.

USDC SDNY  
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ELECTRONICALLY FILED  
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21-CV-9070 (NSR)

ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff Dontie S. Mitchell, who was incarcerated in Mid-State Correctional Facility at the time he filed the complaint and has since been released, brings this action alleging that Defendants violated his federal constitutional rights. By order dated November 3, 2021, Judge McAvoy of the Northern District of New York severed Plaintiff's claims arising at Fishkill Correctional Facility and transferred those claims to this Court. Plaintiff sues JPay, LLC, Fishkill Correctional Facility Food Service Administrator B. McCloskey, and Fishkill Sergeant D. Pauselius. By order dated January 11, 2021, Judge McAvoy granted Plaintiff's request to proceed *in forma pauperis* (IFP).<sup>1</sup>

## DISCUSSION

### A. Service on Defendants

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the amended complaint until the Court reviewed the amended complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants JPay, LLC, B. McCloskey, and Sergeant D. Pauselius through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

**CONCLUSION**

The Clerk of Court is further instructed to issue summonses, complete the USM-285 forms with the addresses for JPay, LLC, B. McCloskey, and Sergeant D. Pauselius, and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

SO ORDERED.

Dated: November 24, 2021  
White Plains, New York

A handwritten signature in blue ink, appearing to read 'Nelson S. Román', is written over a horizontal line.

NELSON S. ROMÁN  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. JPay, LLC  
10981 Marks Way  
Miramar, FL 33025
2. Food Service Administrator B. McCloskey  
Fishkill Correctional Facility  
271 Matteawan Road  
P.O. Box 1245  
Beacon, NY 12508
3. Sergeant D. Pauselius  
Fishkill Correctional Facility  
271 Matteawan Road  
P.O. Box 1245  
Beacon, NY 12508